IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

CRP.No. 1122 of 2002(E)

AGAINST THE JUDGMENT IN A.S.41 OF 97 ON THE FILE OF THE DISTRICT COURT, MANJERI, MADE AGAINST THE ORDER IN OP.(SUCCESSION) NO.2 OF 94 ON THE FILE OF THE MUNSIFF'S COURT, MANJERI DATED 29/11/1996

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REVN. PETITIONERS:APPELLANTS:PETITIONERS:

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1. **NOCHIKUNDU NADICHI,**
   FATHER'S NAME NOT KNOWN. (D I E D).

2. **RADHAKRISHNAN, S/O.NADICHI,**
   (ALL ARE RESIDING AT NARIKA AMSOM,
   KOTTUPARA DESOM, ERNAKULAM TALUK,
   MALAPPURAM DISTRICT.

***1ST REVISION PETITIONER DIED AND THE 2ND REVISION PETITIONER IS HER SOLE LEGAL HEIR IS RECORDED, AS PER ORDER DTD. 24/10/07 IN I.A.NO.2493/07.**

BY ADV. SRI.T.K.AJITH KUMAR

RESPONDENTS:

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1. **K.SARADHA, W/O.C.P.CHERIYATHAN(LATE),**

2. **SUSHAMARANAI,**
   D/O.LATE C.P.CHERIYATHAN.

3. **PARTHIMA RANI,**
   D/O.LATE C.P.CHERIYATHAN.

4. **ASMARANI.**

(ALL ARE RESIDING AT KOTTAPPADI AMSOM, MALAPPURAM DESOM, MALAPPURAM DISTRICT)

BY ADV. SMT.PREETHY KARUNAKARAN
SRI.R.RAJESH KORMATH
SRI.ANISH S.AMBADY
SMT.BIJIMOL JOSE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.2887/2002 IN C.R.P.NO.1122/2002

DISMISSED

16/112007 **SD/- M.N.KRISHNAN, JUDGE**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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C.R.P. No.1122 OF 2002

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Dated this the 16th day of November 2007

ORDER

This civil revision petition is preferred against the judgment of the District Judge, Manjeri in A.S.No.41 of 1997. The said appeal was preferred against the judgment of the Musiff's Court, Manjeri in O.P.(Succ.)No.2 of 1994. The brief facts necessary for the disposal of the revision are stated as follows: I will refer to the rank of the parties in the original petition to avoid confusion. It is the case of the original petitioners that the first petitioner is the legally wedded wife of one C.P.Cheriyathan and petitioners 2 to 4 are the children born to them in their wedlock. Cheriyathan was an employee of the Kerala State Road Transport Corporation as a driver and retired from service on 30.6.1984. He died in 1985. The first petitioner received pension from 1.1.1986 onwards. The pension was stopped with effect from February, 1993 in view of the claim made by respondents 1 and 2 in the case. On the contra, respondents 1 and 2 would contend that the said Cheriyathan had married the first respondent in June, 1954 and the 2nd respondent is born in the said wedlock and on account of the ill-treatment by the mother-in-law she left the matrimonial home but still was maintained

by Cheriyathan and further that Cheriyathan had never married the first petitioner and they also denied that petitioners 2 to 4 are the children through the first petitioner.

2. The trial court, on appreciation of the materials available before it arrived at a decision that it requires a full fledged enquiry as to the marriage and being a summary trial it cannot be decided and therefore dismissed the O.P. The appellate court, on re -appreciation of the entire materials found that there is some acceptable evidence to hold that the first petitioner is the wife and petitioners 2 to 4 are the children and therefore ordered issuance of succession certificate but of course subject to the decision of a civil court, if the matter is agitated by the respondents in the civil court. Before entering into the facts , it is desirable to state the power of the court and the procedure to be adopted by the court in a case relating to issuance of succession certificate. Under Section 373(3) of the Indian Succession Act, if the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto. So, in a case where the intricate questions of fact and law are involved the court has to analyse the evidence available and find out

at that stage, who is having a better title and then direct issuance of succession certificate. The best person to say who is the wife is the husband. The conduct of Cheriyathan would show that he had treated the first petitioner as the wife and petitioners 2 to 4 as his children. For proving the marriage of the first petitioner as well as the first respondent witnesses had been examined. Exts.A5 to A7 are the extract of the school admission register of petitioners 2 to 4 wherein Cheriyathan is shown as their father. Ext.A8 is the assignment deed No.1103/84 executed by a stranger in favour of the first petitioner describing her as the wife of Cheriyathan. Ext.A9 is the pension payment order with the photograph issued to the first petitioner and Ext.A10 is the ration card issued to Cheriyathan and the members of his family for the period from 1975-76 onwards, where it is seen that Cheriyathan had been living with petitioners 1 to 4 under the same roof. Ext.X1 is the file summoned from the K.S.R.T.C. wherein also Cheriyathan had considered the first petitioner as his wife and petitioners 2 to 4 as his children. Similarly from the other documents and except the document which is said to have been prepared by the Tahsildar, nothing will pinpoint the common residence of Cheriyathan with the respondents. Therefore, the documentary evidence available before court would point out that Cheriyathan has treated Sarada as his wife and petitioners 2 to 4 as his

children. Even he had only nominated Sarada as a person entitled to pension and these are all prima facie ingredients which would show that petitioners in the O.P. are having a better title rather than respondents.

3. The definite case of the respondents is that there had been a valid marriage between the first respondent and Cheriyathan in the year 1954 which had never been dissolved and in case it is not dissolved even if another marriage is contracted to it will be an invalid marriage under law and she will not be entitled to pension as a legally wedded wife of deceased Cheriyathan. But this is a matter which can be only considered after elaborate evidence in a properly constituted civil suit. It has also to be stated that the first revision petitioner is dead and only second revision petitioner survives.

4. I do not find any illegality, irregularity or perversity in the judgment passed by the District Judge, whereby he has directed issuance of succession certificate in favour of the petitioners. I also make it clear that any observations or findings recorded in this case shall not be the guideline to arrive at a decision in a properly constituted civil suit by the revision petitioners and untrammelled by the observations it has to be decided

independently by that court.

M.N.KRISHNAN, JUDGE

Cdp/-